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15 Allen Loretz, individually and on behalf of)
16 all others similarly situated,) Case No. C 07-5800 SC
17 Plaintiffs,) And related cases:
18 v.) 07-6045 SC, 08-2268 SC, 08-2052 SC,
19 Regal Stone, Ltd., Hanjin Shipping, Co.,) 08-5098 SC, 09-01469 SC
20 Ltd., Synergy Maritime, Ltd., Fleet)
21 Management Ltd., and John Cota, *In Personam*; M/V Cosco Busan, their engines,)
22 tackle, equipment, appurtenances, freights,)
23 and cargo *In Rem*,)
24 Defendants.)
25)
26)
27)
28)

**SECOND SUPPLEMENTAL
DECLARATION OF STUART G.
GROSS IN SUPPORT OF CLASS
COUNSELS' MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS
TO THE NAMED PLAINTIFFS**

1 I, STUART G. GROSS, declare as follows:

2 1. I am an attorney admitted to practice before all courts of the State of California
3 and before this Court, and am an attorney in the law firm Cotchett, Pitre & McCarthy (“CPM”).
4 I make this declaration of my own personal knowledge, and, if called as a witness, I could and
5 would competently testify to the matters stated below.

6 2. I submit this supplemental declaration in support of Class Counsels’ Motion For
7 Award Of Attorneys’ Fees, Costs, And Service Awards To The Named Plaintiffs (“Motion For
8 Fees & Costs”).

9 3. CPM’s lodestar figure of \$434,392.50 submitted in association with the class-
10 wide settlement of the claims of San Francisco Bay commercial Dungeness crab fishermen
11 arising out of the Cosco Busan oil spill (“CBOS”) (“Dungeness Crab Claims”) represents
12 approximately 27% of CPM’s total lodestar for the entire case, \$1,598,935.00, calculated from
13 inception of the litigation on November 13, 2007, through June 29, 2010, four days before the
14 Motion For Fees & Costs was filed. CPM will seek an award of fees based on the remaining
15 approximately 73% of that lodestar through an application associated with the resolution of
16 claims of various categories of San Francisco Bay commercial finfish fishermen that CPM is
17 pursuing (“Finfish Claims”). CPM is pursuing the Finfish Claims in the parallel State court case
18 before the Honorable John Munter, *Tarantino, et al. v. Hanjin Shipping Co., et al.*, CGC-07-
19 469379 (SF Sup.), and has reached a settlement in principal of these claims with Defendants,
20 which is scheduled to be submitted to Judge Munter for preliminary approval on September 29,
21 2010.

22 4. CPM allocated its total November 13, 2007 through June 29, 2010 lodestar
23 between the Dungeness Crab Claims and Finfish Crab Claims based on: (a) the results achieved
24 as to the two categories of claims; and (b) the extent to which the work associated with a
25 particular time entry was more or less associated with pursuit of one or the other categories of
26 claims.

1 5. The redacted allocated time report submitted as Exhibit 1 to the Supplemental
2 Declaration of Stuart G. Gross filed on September 14, 2010 (“Allocated Time Report”), provides
3 a graphic representation of this allocation process.

4 6. For the Court’s convenience, CPM color-coded the Allocated Time Report. Time
5 entries that were allocated equally between Dungeness Crab Claims and Finfish Claims are
6 highlighted in green. Time entries that were allocated by some other proportion – in most of
7 such instances less than 50% of the particular time entry was allocated to Dungeness Crab
8 Claims but in a small number of instances more than 50% of the particular time entry was
9 allocated to Dungeness Crab Claims – are highlighted in blue. Time entries that were allocated
10 100% to Dungeness Crab Claims are highlighted in yellow. Finally, time entries that were
11 allocated 100% to Finfish Claims were omitted from the report.

12 7. Time allocated equally between the Dungeness Crab Claims and the Finfish
13 Claims, which is highlighted in green (“Green Time”), reflects work that furthered the pursuit of
14 both the Dungeness Crab Claims and Finfish Claims and is properly allocated in equal
15 proportions between those claims based on the necessity and/or applicability of the work to the
16 pursuit of both categories of claims and the results achieved for each category of claims.

17 8. Accordingly, the greatest concentration of Green Time occurs near the inception
18 of the litigation, when CPM was doing work that was foundational for all of the claims pursued
19 in the litigation. For example, Line 8 of the Allocated Time Report, to which the internal
20 Transaction ID No. 96,932 is assigned, describes 8.5 hours worked by Stuart Gross on November
21 16, 2007. The Activity Description for this entry describes the work done by Mr. Gross as
22 follows: “Prepare Complaint.” Neither the Dungeness Crab Claims nor the Finfish Claims
23 claims could have been pursued without a complaint having been prepared, and the Complaint
24 that Mr. Gross prepared states both categories of claims. Thus, the work spent by Mr. Gross
25 preparing the Complaint is properly allocated in equal proportions between the two categories of
26 claims: 4.25 hours to the lodestar associated with pursuit of the Dungeness Crab Claims and
27 4.25 hours to the lodestar associated with the pursuit of the Finfish Claims.

1 9. Time allocated by some proportion other than equally between the Dungeness
2 Crab Claims and the Finfish Claims or 100% to one category or the other, which is highlighted in
3 blue (“Blue Time”), reflects work that furthered the pursuit of the Dungeness Crab Claims and
4 Finfish Claims but is properly allocated in non-equal proportions between the two claims based
5 on the relative necessity and/or applicability of the work to pursuit of one category of claims
6 and/or the relative results that worked achieved as to each category of claims.

7 10. In some cases, the chosen proportions were based on the fact that an entry
8 described work on projects that furthered both categories of claims as well as projects that were
9 directly related to only one category of claims. For example, Line 154 of the Allocated Time
10 Report, to which the internal Transaction ID No. 105,448 was assigned, describes 5 hours
11 worked by CPM legal assistant Kimberly So on March 12, 2008. The Activity Description
12 describes this work by Ms. So as follows: “Prepare/meet with Clients Sau & Kiu Phang re
13 Claims Process, Prepare plan for Disco. to Regal Stone, Fleet Management, and Hanjin.” Sau
14 and Kiu Phang are commercial nearshore (rockfish) fishermen; therefore, time spent working on
15 their short-term claims is properly allocated to the lodestar associated with pursuit of Finfish
16 Claims. However, preparing a plan for discovery against Defendants (the other activity
17 described) is work that was necessary for, and furthered the pursuit of both categories of claims.
18 Accordingly CPM allocated 75% of Ms. So’s time in this entry to the lodestar associated with the
19 Finfish Claims and 25% to the lodestar associated with the Dungeness Crab Claims.

20 11. In other instances, the proportional allocation of Blue Time, was based on the
21 relative value of work done as to the pursuit of each type of claims as well as the results
22 ultimately achieved. For example, Line 128 of the Allocated Time Report, to which internal
23 Transaction ID No. 103,955 was assigned, describes 10.7 hours worked by senior paralegal Don
24 Thornton on February 21, 2008. The Activity Description describes this work by Mr. Thornton
25 as follows: “FACT INVESTIGATION: Research and public record check on similar claims
26 processes in the past. Research into the herring, rock fish and commercial fishing industries, and
27 potential others hit by spill.” Based on the criteria just described, CPM allocated 10% of this

1 time, 1.07 hours, to the lodestar associated with pursuit of Dungeness Crab Claims and 90% of
2 this time, 9.63 hours, to the lodestar associated with pursuit of Finfish Claims.

3 12. Time allocated 100% to Dungeness Crab Claims, which is highlighted in yellow
4 (“Yellow Time”), reflects work that is properly allocated in full to the pursuit of the Dungeness
5 Crab Claims based on the relative necessity and/or applicability of the work to pursuit of this
6 category of claims and/or the results achieved. For example, Line 85 of the Allocated Time
7 Report, to which internal Transaction ID No. 100,536 is assigned, describes 12 hours worked by
8 CPM attorney Stuart Gross on January 7, 2008. The Activity Description describes this work by
9 Mr. Gross as follows: “Preparation of motion for order show cause and related affidavits.”
10 Through the motion for an order to show cause, Plaintiffs successfully sought an order by this
11 Court halting Defendants’ abuse of the short-term claims, through which Defendants sought to
12 require commercial Dungeness crab fishermen to waive substantial rights in exchange for receipt
13 of small interim payments and foreclose the rights of Dungeness crab fishermen to seek
14 compensation through the short-term claims process if they were lead plaintiffs in any class
15 litigation against Defendants. Accordingly, CPM allocated all of this time to the lodestar
16 associated with pursuit of Dungeness Crab Claims.

17 13. The time that CPM allocated 100% to pursuit of the Finfish Claims consists of
18 both time that is related only to the pursuit of the Finfish Claims, e.g., the time spent by CPM on
19 its successful motion to certify a Commercial Herring Fishermen Subclass before Judge Munter,
20 as well as time that, while relating generally to the pursuit of all categories of claims, ultimately
21 is properly allocated 100% to the pursuit of Finfish Claims based on the value that such work
22 brought to the pursuit of Finfish Claims, e.g. certain portions of discovery conducted in the latter
23 stages of the litigation.

24 14. The \$29,144.55 in costs, including \$5,562.5 in expert/consultant fees, for which
25 CPM seeks reimbursement in association with the class-wide settlement of the Dungeness Crab
26 Claims is also the product of allocation decisions. These decisions resulted in allocation of
27 approximately three quarters of all costs, incurred from November 13, 2007 through June 29,
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1 2010, to the pursuit of Finfish Claims and allocation of only approximately one quarter of those
2 costs to the pursuit of Dungeness Crab Claims.

3 15. CPM's total costs from inception of the litigation on November 13, 2007, through
4 June 29, 2010, four days before the Motion For Fees & Costs was filed, equaled \$138,822.10,
5 including \$65,032.30 in expert/consultant fees.

6 16. This allocation was achieved by, first, separating out costs that were solely
7 attributable to pursuit of the Finfish Claims, including but not limited to \$59,469.80 in
8 expert/consultant fees, the \$40 filing fee charged by San Francisco Superior Court for filing the
9 Motion to Certify the Commercial Herring Fishermen Subclass, and the \$1,783.13 in facilities
10 costs incurred in connection with an informational meeting held for Commercial Herring
11 Fishermen Subclass members. Next, the remaining costs, which equaled \$58,289.10, were
12 divided in half and allocated equally between pursuit of the Dungeness Crab Claims and Finfish
13 Claims.

14 17. The allocation of these costs equally between pursuit of the two categories of
15 claims was reasonable, in light of the fact that such costs were necessary either for (a) pursuit of
16 litigation on behalf of both categories of claims or (b) preparation of short-term claims submitted
17 on behalf of Lead Plaintiffs, which arose varyingly out of their participation in the commercial
18 Dungeness crab fishery and various Finfish fisheries.

19 18. As to various costs themselves, all were reasonably incurred.

20 19. For example, CPM was forced to incur \$5,453.14 in service of process costs
21 (\$2,726.57 of which it seeks reimbursement, here) as a result of the refusal by counsel for
22 Defendants Fleet Management Ltd. ("Fleet") and Regal Stone Ltd. ("Regal") to accept service of
23 process on behalf of their Hong Kong resident clients or waive such service. This forced CPM to
24 explore other methods of completing such service, including service using Hague Convention On
25 The Service Abroad Of Judicial And Extrajudicial Documents In Civil Or Commercial Matters
26 ("Hague Convention") mechanisms and mail service in accordance with California State law, as
27 allowed under Article 10 of the Hague Convention. Ultimately, based on the work by a private

1 investigator, CPM was able to complete service upon these entities through mail service directed
2 to the home and office addresses of multiple Fleet and Regal executives. It was reasonably
3 necessary for CPM to expend the costs to identify such persons and their home and work
4 addresses, as well as to mail service of process packages to each of those addresses, in light of
5 the refusal by counsel for Fleet and Regal to facilitate service of their clients, which plausibly
6 indicated a strategy by Fleet and Regal to evade service of process for as long as possible. It was
7 reasonable, therefore, to anticipate that some or all of the persons to which service packets were
8 sent would refuse delivery at either their work or home addresses, necessitating the building in of
9 a certain level of redundancy. Furthermore, until counsel for Defendants Fleet and Regal
10 acknowledged the adequacy of the service of process completed upon each by mail, it was
11 reasonably necessary for CPM to incur the costs necessary to effect service of process on these
12 Defendants using Hague Convention mechanisms. CPM canceled this work when counsel for
13 Fleet and Regal acknowledged the adequacy of the service of process effected on both through
14 mail.

15 20. As a further example, the \$10,886.50 for in-house photocopying charges that
16 CPM incurred from November 13, 2007 through June 29, 2010, of which just \$2,728.05 is
17 requested in reimbursement here, is reasonable given the substantial amount of copying that
18 CPM had to do not only in connection with litigation efforts, but also in connection with
19 processing the short-term claims of its lead Plaintiffs. The latter work, which resulted in CPM's
20 Lead Dungeness Settlement Class Representatives receiving \$510,749.49 in short-term claims
21 payments separate and in addition to the consideration that they will receive through the instant
22 Settlement, was very document intensive, requiring CPM to make copies of a substantial number
23 of lengthy Department Fish & Game records for each person whose claim CPM prepared.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 || Executed on September 20, 2010.

s/ Stuart G. Gross
STUART G. GROSS